



OLD VALUES - NEW HORIZONS

## COMMUNITY DEVELOPMENT

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### Amended Draft Minutes Zoning Board of Adjustment

November 10, 2015

7:30 pm @ Windham Town Hall

Mike Scholz	Chairman	Present	Mike Mazalewski	Alternate	Present
Heath Partington	Vice Chair	Present	Kevin Hughes	Alternate	Present
Mike Samsel	Secretary	Present	Jim Tierney	Alternate	Excused
Pam Skinner	Member	Present	Jay Yennaco	Alternate	Excused
Bruce Breton	Member	Present			

#### Staff:

Dick Gregory, ZBA Code Enforcement Administrator

Suzanne Whiteford, Minute Taker

**Meeting called to order at 7:30 by Chairman Scholz**

**Case #30-2015 read into the record per Mr. Samsel**

**Lot 11-A-248, Case # 30-2015, continued from 9-22-2015**

**Applicant:** KRD Builders

**Owner:** Ed Zabawski

**Location:** 7 Yorkshire Road

**Zone:** Rural, Wetland & Watershed Protection District (WWPD)

Variance relief from the following Sections of the Town of Windham Zoning Ordinance and Land Use Regulations is requested to allow the construction of a 26' x 65' free standing garage.

**Section 601.3** to allow a garage to be constructed in the WWPD where none is allowed.

**Section 702, App.A-1** to allow the garage to be 10 ft. from the side lot line where, 30 ft. is allowed.

A new set of plans were distributed per Mr. Tim Lavelle from Lavelle associates which included an amendment to the original plan for a proposed botanical rain garden to mitigate water runoff from the garage.

Mr. Lavelle informed the ZBA the new set of plans are on file with the town and the Conservation Commission.

Mr. Lavelle informed the ZBA he is scheduled to present the plan to the Conservation Commission on Thursday November 12, 2015.

Chairman Scholz inquired about the total impervious coverage.

Mr. Lavelle responded the driveway is an additional 485 square feet.

**Wayne Morris, Chairman Conservation Commission**

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Mr. Morris received applicant's plan just tonight. Mr. Morris explained to the ZBA that the applicant has missed two opportunities before the Conservation Commission to present the plan. Mr. Morris is in agreement to review the plan on November 12, 2015.

Chairman Scholz is concerned about the substantial size of the proposed garage. Chairman Scholz asked the applicant if it is an option to move it further away from the lot line.

Mr. Zabawski (owner/applicant) responded to Chairman Scholz that he is unable to move the garage away from the lot line due to the topography. Mr. Zabawski explained that in addition to a challenging topography the proposed placement of the garage avoids any disturbance to WWPD.

**Motion by Mr. Samsel to go into deliberation**

**Second by Mr. Partington**

**Vote 5-0-0**

**Motion carries**

Mr. Samsel is concerned about granting a variance based on the approval of another board to be determined after the ZBA decision.

Mr. Partington reviewed the 5 variance criteria.

Mr. Partington is not comfortable in gauging water runoff, as presented, from a very large substantial building without Conservation Commission input.

Mr. Partington believes the plan meets the 5 variance criteria for the setback issue.

Mr. Partington is not convinced the plan meets the 5 criteria for the WWPD without conservation Commission input.

Mr. Samsel agrees with Mr. Partington. Mr. Samsel believes it is a strange sequence for the ZBA to have a hearing before Conservation Commission reviews the plan and provides feedback. Mr. Samsel believes the case has already been continued and the opportunity for public weigh in is now and that the ZBA can make a decision based on what is in front of them.

Chairman Scholz believes the impervious runoff is not the issue. Chairman Scholz is concerned about the lot line. Chairman Scholz agrees with Mr. Partington regarding the Conservation Commission feedback. Chairman Scholz stated the proposal is a substantial request without complete information.

Ms. Skinner commented that she would prefer to continue the hearing with Conservation Commission input.

Mr. Bretton commented that the applicant previously asked for the hearing to be continued based on Conservation Commission input; the applicant had opportunities to present the plan to Conservation Committee prior to tonight's scheduled hearing.

**In consideration of the testimony presented, a motion was made by Mr. Breton to deny Case # 30-2015 as presented**

**Second by Mr. Samsel**

**Board discussion about the motion to deny V a motion to continue.**

After board discussion Mr. Breton made a motion to withdraw his motion

**In consideration of the testimony presented, a motion was made by Mr. Breton to continue Case #30-2015 to November 24, 2015 to allow applicant time to present plan to Conservation Commission and, time for ZBA to receive Conservation Commission feedback for consideration.**

**Second by Ms. Skinner**

**Vote 5-0-0**

**Motion carries**

**Case #37-2015 read into the record by Mr. Samsel**

**Abutter list was read into the record at the prior meeting.**

**Lot 21-H-14, Case #37-2015, continued from 10-13-2015**

**Owner/applicant:** John G. & Cheryl A. Albert

**Location:** 19 Lake Shore Road

**Zone:** Residential A & Cobbetts Pond & Canobie Lake Watershed Protection (CPCLWP)

Variance relief from the following section of the Town of Windham Zoning Ordinance and Land **Section 406.2** to allow an increase in volume from 35,238 cu. ft. to 74,589 cu. ft. and an increase in footprint from 1,642 sq. ft. to 3,252 sq. ft.

**Robert Balquist, Engineering Technician, representing the owners.** Mr. Balquist entered an email from Craig Day with the Shoreland Program into the record as exhibit A. Exhibit A is an email acknowledging receipt of applicant's revised plan, in Mr. Day's opinion the plan meets Shoreland requirements, and he anticipates Shoreland approval.

Mr. Balquist presented the 5 variance criteria for Case #37-2015.

Mr. Partington asked Mr. Balquist if he has a current floor plan.

Mr. Balquist does not have a revised floor plan. Mr. Balquist stated the revised plan will show a decrease in the number of garage bays from 4 to 3 and a reduction in length by 12 feet.

**Chairman Scholz opened the hearing for public comment.**

**No comments from the public.**

Mr. Gregory requested that the applicant state the foot print size that is being requested.

Mr. Balquist responded the proposed Volume requested is 74589 cu feet; the requested Footprint is 3252 sq. Feet.

**Motion to enter into deliberation by Mr. Samsel**

**Second by Mr. Breton**

**Vote 5-0-0**

**Motion carries**

Mr. Partington acknowledged that the applicant has worked hard to meet the setback criteria.

Mr. Partington reviewed the 5 variance criteria and believes the applicant has met all 5 criteria.

**In consideration of the 5 variance criteria and the testimony presented, a motion was made by Mr. Samsel to grant variance relief per plan submitted for Lot 21-H-14, Case #37-2015, from Section 406.2 of the Town of Windham Zoning Ordinance and Land to allow an increase in**

volume from 35,238 cu. ft. to 74,589 cu. ft. and an increase in footprint from 1,642 sq. ft. to 3,252 sq. ft.

**Second by Mr. Breton**

**Vote 4-1-0 Ms. Skinner opposed, the overall footprint is too large; applicant does not meet variance criteria #5.**

**Motion carries**

**Case #38-2015 and the abutter list read into the record per Mr. Samsel**

**Lot 14-B-3425, Case # 38-2015**

**Owner/applicant – Robert Schenk**

**Location – 53 Castle Hill Road**

**Zone – Rural, Wetland & Watershed Protection District (WWPD)**

Variance relief from the following section of the Town of Windham Zoning Ordinance and Land Use Regulations to construct a 12 ft. x 24ft. shed.

**Section 702, App. A-1** to allow the shed to be 11ft. from the side lot line where 30 ft. is required.

Owner/applicant Mr. Schenk presented Case #38-2015 and reviewed the 5 variance criteria.

Mr. Samsel asked Mr. Schenk to elaborate regarding the ‘only available’ location to place the shed.

Mr. Schenk responded the septic is on the right side of the property, a driveway runs down the left side of the property, the area behind the house is wooded area, and between the shed and the pool is a driveway. The shed as proposed will be 18 inches away from the driveway.

**Chairman Scholz opened the hearing for public comment.**

**No comments from the public.**

**Motion by Mr. Breton to go into deliberation**

**Second by Mr. Samsel**

**Vote 5-0-0**

**Motion carries**

Mr. Samsel believes the case as proposed meets the 5 variance criteria

Chairman Scholz and Mr. Partington agree with Mr. Samsel that the proposed plan meets the 5 variance criteria

**In consideration of the 5 variance criteria and the testimony presented, a motion was made by Mr. Breton to grant variance relief per plan submitted for Lot 14-B-3425, Case # 38-2015 From Section 702, App. A-1 of the Town of Windham Zoning Ordinance and Land Use Regulations to construct a 12 ft. x 24ft. shed and to allow the shed to be 11ft. from the side lot line where 30 ft. is required.**

**Second by Mr. Samsel**

**Vote 5-0-0**

**Motion carries**

**Case #39-2015 and abutter list read into the record**

**Lots 17-G-6 & 17-G-20 Case #39-2015**

**Applicant** – Ryan Development

**Owner** – 106 Indian Rock Road LLC & Diana Wolters c/o Attorney Andrew Sullivan

**Location** – 102 Indian Rock Road & 82 Range Road

**Zone**- Gateway Commercial District & Cobbets Pond and Canobie Lake Watershed Protection District (CPCLWP)

Variance relief from the following section of the Town of Windham Zoning Ordinance and Land Use Regulations to allow more impervious surfaces than allowed.

**Section 616.6.4.2** to allow the combined lots to be covered with impervious surfaces of 55.2 % where 30% is allowed.

Ryan Development presented Case #39-2015 and reviewed the 5 variance criteria

A color copy of the proposed plan was distributed to the Board and reviewed.

Ms. Samsel asked the applicant to speak to the maintenance of the proposed porous surface.

The applicant responded that the proper installation and maintenance of the porous surface keeps it at optimal absorption and maintains its beauty.

Mr. Samsel inquired about the lifespan of the porous pavement.

The applicant responded he does not have a specific time frame to offer.

Mr. Samsel asked the applicant how he knows when there is deterioration to the porous pavement.

The applicant responded the porous pavement will be monitored for cracks or other visual signs of deterioration.

Mr. Samsel asked the applicant why he is not proposing porous use on the parking lots.

The applicant stated he could implement more porous pavement into the plan.

Chairman Scholz asked the applicant to address drainage and porous pavement and how drainage is affected if the porous pavement is not properly and regularly maintained.

The applicant stated he intends to include a comprehensive maintenance plan that will include provisions for routine inspection and refreshing the porous pavement for loss of permeability. The applicant stated he does not anticipate the entire porous pavement would fail; rather there would potentially be pockets that fail.

Mr. Samsel asked the applicant what is the largest area of porous pavement he has worked with.

The applicant responded the largest area he has experience with is 2 acres.

The applicant stated he is aware of a Lowes store constructed with porous pavement and it covered approximately 4 to 5 acres

Mr. Samsel asked the applicant to speak to his plans for septic.

The applicant responded they are working with the town and Pennichuck in planning a septic design to include off site septic.

Mr. Mazalewski stated he has not seen a topographical plan for the site as proposed; specifically the mentioned 75 foot difference in elevations and changes.

The applicant responded the plan has not been fully designed with regards to topography. The applicant stated he is committed to creating a post construction water flow in the same direction as

pre construction water flow. The applicant stated he would consider diverting water flow in the southwest quadrant of the plan into the discharges onto 111A.

Mr. Mazalewski asked how the applicant intends to recharge site water into solid rock.

The applicant replied he intends to attempt to mimic the drainage and recharge, fully profile the ledge, and develop a ledge profile to mimic the current condition.

Mr. Mazalewski asked the applicant if the lot on range road will remain undeveloped.

The applicant responded not all of the lot on Range Rd. will remain undeveloped. The applicant explained that some sloping will need to be done to overcome existing topography, the existing house will be removed, and there will be a comprehensive landscaping plan with transition into the residential area.

**Chairman Scholz opened the hearing for public comment.**

**Hilary Jordan, 30 Mountain Village Road**, has been a Windham resident for 33 years. Ms. Jordan spoke in favor of the proposed plan. She believes it is a proactive plan based on evidence based research that will produce jobs and revenue. Ms. Jordan stated if this plan is not approved, eventually there will be a commercial project on the land.

**Andrew Cane, 2 Woodview Road** spoke in support of the location for the proposed plan. Mr. Cane has concerns about noise during construction and water supply availability if Pennichuck is not able to support the plan.

**Steve Koza, 20 Carr Hill Road** spoke in favor of the project. He believes it is an ideal property for this type of development and could offer residents tax relief.

**Jed Z. Callen, Esq., BCM Environmental & Land Law, PLLC** representing the abutters submitted written opposition to the proposed variances which were submitted into the file. Attorney Callen stated there was an error with the application.

Mr. Partington asked if someone can speak to how it is calculated that the property is in the canobie and Cobbett's pond watershed protective district. Attorney Callen deferred his answer.

Mr. Gregory responded to Attorney's Callen statement regarding application error. The application Attorney Callen cited was not the current application. The current application is filed correctly. Attorney Callen agreed he cited the wrong (not current) application.

**Derek Monson, 18 Turtle Pond Road**, VP Cobbett's Pond Improvement Association read a letter of opposition to the request for variance into the record which was placed in the case file. Mr. Monson stated the DES delineates watershed maps which we adopted for the ordinance.

Mr. Samsel asked Mr. Monson if he was involved in any of the discussions between you, the developer and the DES

Mr. Munson No, not contacted or involved

**Renee L. Bourdeau, Water resources Engineer** with Geosyntec Consultants read a letter in opposition to the request for variance into the record which was placed into the case file. Ms. Bourdeau commented that the porous pavement used in the back parking lot of the Lowes referenced by the applicant was not ploughed during the winter. Ms. Bourdeau stated the applicant

is proposing the same porous pavement (used for the back parking lot of Lowes) for the main parking area of the plan. Ms. Bourdeau asked if the applicant addressed surface ponding; if not, surface ponding will cause the porous pavement to fail.

Chairman Scholz asked Ms. Bourdeau if he would be in opposition of the plan if the applicant got to 30% impervious area.

Ms. Bourdeau replied he would need more information from the applicant. Ms. Bourdeau commented it would depend on the asphalt design and further details to be able to answer the question.

In response to Ms. Bourdeau's statement about Lowe's, Chairman Scholz stated he has not yet asked the applicant about a snow removal plan.

Mr. Samsel asked Ms. Bourdeau how degradation is measured.

Ms. Bourdeau explained how degradation is measured and referred Board to the DES publication of how it is measured for additional information.

Mr. Samsel asked Ms. Bourdeau how the number 30 % was decided.

Mr. Munson stated he was working with DES when the ordinance was written. Mr. Munson explained the number 30% was based on published studies, reviewed at the time the ordinance was written, which supported that number.

**William Schroeder, 14 Woodvue Road**, President of Canobie Lake Protective Association read a letter on behalf of the association which was placed in the case file.

**Cathy Souter, 9 Rolling Ridge Road** stated her concern about water availability explaining that she has a neighbor who built a house near Cobbetts Pond 10 years ago and was told at that time Pennachuck did not have water available to supply. Ms. Souter asked how a variance can be granted without a finalized plan. Ms. Souter stated the residents in the town voted for 30% and that is what the residents want it to stay.

**Norm Young, 1 Jordan Road** Vice President and Treasurer of Friends of Moeckel Pond read a letter of opposition to the proposed plan. Mr. Young explained to the Board how the level of Moeckel Pond can raise nearly 2 inches during a significant storm.

Chairman Scholz asked how Mr. Young arrived at his calculations regarding the potential to raise the level of the pond nearly 2" during a significant storm.

Mr. Young reviewed his calculation methods.

**Paul Moran, 18 West Shore Road** spoke in opposition of the proposed plan. Mr. Moran invited members of the Board to visit West Shore Rd. and Range Rd. to view the failing culvert in that location.

Chairman Scholz asked Mr. Moran if the failing culvert is being addressed.

Mr. Moran responded he does not know if it is being addressed.

**Tom Murray, 29 West Shore Road** a commercial general contractor and former ZBA member. Mr. Murray commented that upon review of the application, the ZBA can request a water and drainage study. Mr. Murray stated he supports economic development but not at the cost of the

town. Mr. Murray commented that the current degradation of Canobie Lake is ongoing. Mr. Murray stated that the reason the state relocated the highway was due to a conservation lawsuit filed against the DOT. Mr. Murray questioned if the application was complete.

Mr. Murray stated the following reasons he believes the ZBA should reject the application:

- Abutting town was not listed in the abutter list. Was the town of Salem notified?
- The applicant is not meeting the spirit of the ordinance.
- No evidence submitted regarding property value.
- No special conditions or uniqueness to the properties.
- Does not meet the 5 variance criteria.

**Joan Welch, 56 Turtle Rock Road** spoke in opposition of the proposed plan and requested the ZBA to reject the variance request because the applicant does not meet the required 30% impervious area criteria. Mr. Welch asked that the applicant clarify the proposed distance of the development from Cobbetts Pond; the 1300 feet distance on the application is different from the stated distance from Cobbetts Pond of 2500 feet. Mr. Welch stated the applicant did not go before the Conservation Commission as scheduled.

**Wayne Morris, 14 Jordan Road** spoke as a Windham resident and stated the proposed project is the largest in Windham. Mr. Morris believes a development of this magnitude should go through the proper channels. Mr. Morris stated he has an issue with the process being used for a development of this magnitude. Mr. Morris stated the plan is lacking details, especially details with regards to water and sewer. Mr. Morris believes the ZBA needs a complete plan before making a decision.

Chairman Scholz read the following letters in opposition to Case #39-2015 into the record:

1. Letter dated October 28, 2015 from The Windham Conservation Commission
2. Letter dated November 9, 2015 from Lynn Chrissis
3. Letter dated November 10, 2015 from Gail Sturtevant Souza was referenced and is available in the record for the public to read.
4. Letter dated November 10, 2015 from Francis and Alberta Baggett
5. Letter dated November 9, 2015 from Lisa Nikitas
6. Letter dated November 9, 2015 from Elizabeth Bondioli
7. Letter dated November 10, 2015 from Donna and Lenny Orlando
8. Letter dated November 9, 2015 from Vera Barone
9. Letter dated November 10, 2015 from Michael and Lucille Lomazzo
10. Letter dated November 9, 2015 from James. W Chrissis

The applicant wanted to clarify that he did not ask to be placed on the Conservation Commission agenda. The applicant stated he was notified of being placed on the Conservation Commission agenda and was not able to attend the scheduled hearing. The applicant requested a continuance to provide further details to the ZBA.

Mr. Breton believes the application should be continued.

Mr. Samsel does not believe being unprepared deserves a second chance. The ZBA should make a decision based on the information presented this evening.

Chairman Scholz agrees with Mr. Samsel that a water and drainage study should be presented.



The applicant responded he is happy to present a water and drainage study to be reviewed by the consultant of their (ZBA) choosing.

Mr. Samsel believes the ZBA has heard testimony and should determine based on that testimony whether or not to grant a variance. Mr. Samsel informed the applicant the ZBA's process is to look at the application, listen to public input, and make a decision about the request in the same night it is presented.

Chairman Scholz stated he is fine with a continuation.

Mr. Partington commented that regional impact was mentioned, it is important to address if Salem needs to be notified. The lots are not being merged and it is a valid point how it should be presented. Mr. Partington commented that perhaps the ZBA should know the impervious on both lots.

Chairman Scholz agrees with Mr. Partington and asked Mr. Gregory to review the way the lots should be presented and if the plan is in the WWPDP.

**Motion by Mr. Partington to continue the Case #39-2015 to January 26, 2016.**

**Second by Mr. Breton**

**Vote 3-2-0 Mr. Samsel and Ms. Skinner opposed. Mr. Samsel's reasons for opposition stated above, Ms. Skinner agrees with Mr. Samsel.**

**Motion passes**

#### **Lots 17-G-6 & 17-G-20 Case #40-2015**

**Applicant** – Ryan Development

**Owner** – 106 Indian Rock Road LLC & Diana Wolters c/o Attorney Andrew Sullivan

**Location** – 102 Indian Rock Road & 82 Range Road

**Zone**- Gateway Commercial District & Cobbett's Pond and Canobie Lake Watershed Protection District (CPCLWP)

Variance relief from the following section of the Town of Windham Zoning Ordinance and Land Use Regulations to allow the occupiable space to be taller than allowed

**Section 701.1** to allow the occupiable space of the proposed hotel to be 45 ft. where 35 ft. is allowed.

**Motion by Mr. Breton to continue Case #40-2015 to January 26, 2015 per applicant's request.**

**Second by Mr. Samsel**

**Vote 4-1-0, Ms. Skinner opposed**

**Motion carries.**

**Motion by Mr. Samsel to adjourn**

**Second by Mr. Breton**

**Vote 5-0-0**

**Adjournment 11:42pm**

Minutes submitted by Suzanne Whiteford, ZBA minute taker

